IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 560 of 2001(Defective)

(Old No. 312/1994)

New India Assurance Company Limited, Haldwani …….. Appellant

Versus

Ganguli Devi & others …… Respondents

Mr. R.B. Agarwal, learned counsel for the appellant.
Mr. Amit Bhatt, learned counsel for the respondents.

Hon'ble P.C. Verma, A.C.J.
Hon'ble P.C. Pant, J.

Delivered by Hon'ble P.C. Pant, J.

This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 16.08.1994 passed by Shri P.D. Dhaundiyal, the then learned IV Additional District Judge / Presiding Officer, Motor Accident Claims Tribunal, Nainital whereby in M.A.C. Case No. 173 of 1988 the Tribunal has awarded Rs. 70,000/- as compensation to the appellants/claimants.

2. Brief facts of the case giving rise to the present appeal are that on 10.01.1988, Rajendra Singh (deceased) was travelling from Haldwani to Almora in a bus bearing registration No. URN 9428. The driver of the bus was driving it rashly and negligently. When the bus reached near Khairana, the driver lost control of the bus and it fell in a gorge and caught fire. Rajendra Singh (deceased) and many other passengers got burn injuries and died. The deceased was 17 years of age and was studying in class 10th at G.I.C. Khairana. Smt Ganguli Devi , claimant No. 1 is mother of the deceased while Narsingh (claimant No. 2) and

Km. Debali Devi (claimant No. 3) are brother and sister respectively of the deceased. Opposite party No. 1, Kanta Devi was owner of the vehicle and New India Assurance Company Ltd. (present appellant) was the company with whom the vehicle was ensured. Opposite party No. 4 in the petition was the driver of the vehicle in question.

3. In the written statement before the trial Court, the owner of the vehicle has admitted the accident and death of the passengers including that of Rajendra Singh. However, the opposite parties including the owner have denied allegations that the bus was being driven rashly and negligently by the driver of the bus. Opposite party No. 2 (present appellant) has taken a further plea that the owner of the bus has no permit to ply the vehicle between Haldwani and Almora.

4. Learned Presiding officer of the trial after examining the pleas, framed following issues:

i) Whether, the bus was being driven at the relevant time for and on behalf of opposite party No. 4? In either case, its effect?

ii) Whether, the accident in question on account of which Rajendra Singh died was due to rash and negligent driving of the driver of the bus No. URN 9428?

iii) Whether, on the date of the alleged accident the opposite party No. 1 was not the owner of the vehicle and had no control over the vehicle and its driver? If so, its effect?

iv) Whether, the bus was owned by opposite party no. 4 on the date of accident, if so, its effect?

v) Whether, at the relevant time bus was being driven without valid permit for the route in question? If so, its effect?

vi) Which of the opposite parties is liable to pay compensation to the claimants?

vii) To what amount of compensation, if any, the claimant are entitled?

5. After recording the evidence of the parties and hearing them, learned Presiding officer of the Tribunal has found that the accident in question has taken place due to the rash and negligent driving on part of the driver, who was employed by opposite party No. 1 as owner of the bus. The Tribunal further found that since the bus was plying under Kumaon Motor Owners Union Ltd., hence it had the route permit. The Tribunal also came to the conclusion that the claimants are entitled to compensation to the tune of Rs. 70,000/- and the New India Assurance company Ltd. With whom the vehicle was ensured was liable to pay it. Accordingly, the Award was passed for the sum along with 10% interest on the amount of compensation. Aggrieved with the Award, New India Assurance company Ltd. has preferred this appeal.

6. We have heard learned counsel for the parties and perused the record. This claim petition was filed by Smt. Ganguli (claimant No. 1) mother of the deceased and claimant Nos. 2 & 3 alleging that at the time of his death the deceased was 17 years old and was studying in Class 10th. In future after completing his studies he could provide financial assistance to the family. It is evident from the records that the deceased was not a sharp-minded student and as such little probability was there that in future he would get good job and earn handsome salary but it cannot be denied that he would have earned something which he should have spend on his family. Therefore, is sum of Rs. 500/- per month was rightly estimated by the Tribunal on this count. The annual monetary loss thus comes to Rs. 6,000/-. The age of claimant No. 1 is 15 years and that of claimant Nos. 2 & 3 is 14

and 10 years respectively as such the Tribunal was right in arriving to a conclusion that for another 10 years the claimants would have expected financial assistance from him. Therefore, total monetary loss incurred to the family of the deceased was rightly assessed ten times and Rs. 60,000/- and further Rs. 10,000/- on account of mental pain and sufferings to the family of the deceased totaling to Rs. 70,000/- has rightly been assessed by the Tribunal, which cannot be said to be excessive. This total amount of compensation is to be paid by M/s New India Assurance Company Ltd. i.e. the present appellant in this case.

7. We find no fault in the order passed by the Claims Tribunal while awarding compensation to the extent of Rs. 70,000/- along with 10% interest per annum from the date of petition till the date of actual payment. Therefore, the appeal is devoid of merits and is, hereby dismissed. No order as to costs. Amount deposited in this Court by the appellant company shall be transmitted to the M.A.C.T. concerned for its disbursement amongst the claimants.

(P.C. Pant, J.) **(P.C. Verma, A.C.J.)**

Dt: 07.07.2004
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